



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Carter, DeLuca, Farrell & Schmidt, LLP  
445 Broad Hollow Road,  
Suite 225  
Melville NY 11747

**MAILED**

**JUN 13 2012**

**OFFICE OF PETITIONS**

In re Patent No. 6,598,546	:	
Thomson Alexander	:	DECISION ON PETITION
Issue Date: July 29, 2003	:	UNDER 37 CFR 1.78(a)(3)
Application No. 09/781,482	:	and
Filed: February 12, 2001	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 965-3	:	

This is a decision on the PETITION UNDER 37 C.F.R. §1.78(a)(3) TO ACCEPT AN UNINTENTIONAL DELAYED CLAIM UNDER 35 U.S.C. §120 FOR THE BENEFIT OF A PRIOR FILED APPLICATION filed May 7, 2012, to accept the unintentionally delayed claim to application No. 09/369,366, which claims priority to U.S. Provisional Patent Application No. 60/141,171. This petition is also treated under 37 CFR 1.78(a)(6) as patentee seeks to add claim of priority to a provisional application. Patentee requests correction by way of issuance of a certificate of correction.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 37 CFR 1.78(a)(5)(ii), respectively, and must be filed during the pendency of the nonprovisional application. In addition, the petition under 37 CFR § 1.78(a)(3) and 37 CFR § 1.78(a)(6), respectively, must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR § 1.78(a)(2)(i) 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i), respectively, of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and

- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 37 CFR 1.78(a)(5)(ii), respectively, and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant application was filed after November 29, 2000. A review of the application as filed reveals that the claims for priority set forth on petition were not submitted on filing in the first sentence of the specification or in an application data sheet. (The application as filed only claimed priority from provisional application No. 60/182,040). The additional claims were not filed within the four or sixteen-month period specified in 37 CFR § 1.78(a)(2)(ii) and (5)(ii). The petition includes the required statement of unintentional delay and the required surcharge.

However, the petition is not grantable as it requests addition of a priority claim under 35 U.S.C. 119(e) to provisional application No. 60/141,171, where such claim was not properly made during the pendency of this application. On July 29, 2003, this application matured into patent No. 6,598,546. Under no circumstances can a Certificate of Correction be employed to correct an applicant's mistake by adding or correcting a priority claim under 35 U.S.C. 119(e) for an application filed on or after November 29, 2000.

Section 4503 of the American Inventors Protection Act of 1999 (AIPA) amended 35 U.S.C. 119(e)(1) to state that:

No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section **during the pendency of the application. (emphasis added)**.

A Certificate of Correction is NOT a valid mechanism for adding or correcting a priority claim under 35 U.S.C. 119(e) after a patent has been granted on an application filed on or after November 29, 2000. See MPEP 1481.03.

Thus, the filing of a reissue application may be appropriate. See MPEP 1402.

In view thereof, the petition is dismissed.

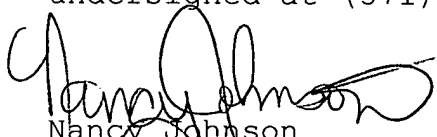
Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop PETITIONS  
                    Commissioner for Patents  
                    Post Office Box 1450  
                    Alexandria, VA 22313-1450

By hand:           Customer Service Window  
                    Mail Stop Petitions  
                    Randolph Building  
                    401 Dulany Street  
                    Alexandria, VA 22314

By fax:            (571) 273-8300  
                    ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions